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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Kenneth Phelps, in his personal capacity)

2007 JUN 11 P 2:41
MUR 5772

SENSITIVE

GENERAL COUNSEL'S REPORT #3

I. ACTION RECOMMENDED

Approve the language set forth in Attachment A to be incorporated in the Department of Justice's plea agreement with Kenneth Phelps as part of a global settlement.

II. BACKGROUND

This matter was initially generated by a Commission audit pursuant to 2 U.S.C. § 438(b) of the Lockheed Martin Employees Political Action Committee ("LMEPAC" or "the Committee") covering the period January 1, 2001 through December 31, 2002. The audit revealed an embezzlement scheme perpetrated by the Committee's former assistant treasurer, Kenneth Phelps. On March 21, 2006, based on the information set forth in the First General Counsel's Report in MUR 5721, the Commission found reason to believe that LMEPAC and Kenneth Phelps violated the Federal Election Campaign Act of 1971, as amended ("the Act"),

Although the Commission was able to successfully conciliate with LMEPAC, we were unable to reach any agreement with Phelps. Due to the lack of response from Phelps, on July 14, 2006, the Commission accepted the conciliation agreement with LMEPAC, severed Phelps from MUR 5721 and opened this MUR as to him, and closed the file in MUR 5721.

the Department of Justice, which indicted

Phelps on April 19, 2007. The indictment charged Phelps with twelve counts of wire fraud (18 U.S.C. § 1343) and twelve counts of false statements (18 U.S.C. § 1001) based upon Phelps' knowing and willful filing of fraudulent reports with the Commission through wire transmission arising out of the same facts at issue in this matter. See Attachment B.

The inclusion of conciliation language in a criminal plea agreement here is similar to the approach used in MUR 5384 (Never Stop Dreaming, Inc.), in which the plea agreement included a civil settlement of § 441h(b) violations, following approval of the conciliation language by the Commission. While this is an infrequently used approach, we believe that this matter involves unique circumstances that support an efficient resolution of the criminal and civil charges.


we believe that inclusion of conciliation language in a criminal plea agreement would be the most efficient resolution of this matter.

III. RECOMMENDATION


1. Approve the language set forth in Attachment A to be incorporated in the Department of Justice's plea agreement with Kenneth Phelps as part of a global settlement.

Thomasenia P. Duncan
General Counsel

Date: 6/11/07

BY: 
Ann Marie Terzaken
Acting Associate General Counsel for
Enforcement


Julie Kara McConnell
Acting Assistant General Counsel


Jin Lee
Attorney

Attachments:

- A. Proposed Conciliation Language
- B. Indictment

Other Agreements by Defendant

- (a) Defendant admits that he knowingly and willfully violated 2 U.S.C. §§ 432(c)(5); 434(b)(4), (6)(B)(v) and 11 C.F.R. § 104.3(b) by failing to accurately account for and report disbursements made to himself in disclosure reports submitted on behalf of Lockheed Martin Employees' Political Action Committee.
- (b) Defendant admits that he knowingly and willfully violated 2 U.S.C. § 432(b)(3) by commingling the funds of Lockheed Martin Employees' Political Action Committee with his personal funds.
- (c) Defendant acknowledges that the Federal Election Commission (FEC) has civil jurisdiction over the violations of the Federal Election Campaign Act of 1971, as amended (FECA), that are the subject matter of these proceedings. Defendant further acknowledges that the FEC has the authority to seek civil remedies against him for these violations pursuant to 2 U.S.C. § 437g(a)(5).
- (d) Defendant agrees to cease and desist from violating 2 U.S.C. §§ 432(b)(3), (c)(5); 434(b)(4), (6)(B)(v), and 11 C.F.R. § 104.3(b).
- (e) Pursuant to 2 U.S.C. § 437g(a)(5)(B), the FEC may seek a civil penalty for knowing and willful violations of 2 U.S.C. §§ 432(b)(3), (c)(5); 434(b)(4), (6)(B)(v), and 11 C.F.R. § 104.3(b), of up to 200 percent of any contribution or expenditure involved in such violation. In light of the financial circumstances of the Defendant and his entering into this Agreement, the FEC seeks no civil penalty. However, Defendant is prohibited from working or volunteering in federal political campaigns in a capacity involving the committee's finances or disclosure reports for a period of 10 years from the date of this Agreement.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)

v.)

KENNETH D. PHELPS III,)

Defendant.)
_____)

Criminal No.

COUNTS ONE

THROUGH TWELVE:

18 U.S.C. § 1343
(Wire Fraud)

COUNTS THIRTEEN

THROUGH TWENTY-FOUR: 18 U.S.C. § 1001
(False Statements)

INDICTMENT

The Grand Jury charges that:

COUNTS ONE THROUGH TWELVE
WIRE FRAUD
(18 U.S.C. § 1343)

General Allegations

At all times material to this Indictment:

1. Lockheed Martin Corporation ("Lockheed") was a publicly-traded corporation that had offices and operations in multiple states, including an office at 1550 Crystal Drive, Arlington, Virginia.

2. Lockheed Martin Employees' Political Action Committee ("Lockheed PAC") was a political action committee registered with the Federal Election Commission. Generally, Lockheed PAC's function was to receive voluntary contributions from employees of Lockheed, and to use those funds to make contributions to candidates for federal and state elected offices. Lockheed PAC was managed from the offices of Lockheed located at 1550 Crystal Drive, Arlington, Virginia.

3. KENNETH D. PHELPS III (hereinafter "PHELPS") was the deputy manager for Lockheed PAC, and also served as the Treasurer for Lockheed PAC. PHELPS' duties in that position included, among other things, preparing contribution checks for distribution to federal and state candidates, keeping track of disbursements and receipts within Lockheed PAC's computer system, and making periodic required filings with the Federal Election Commission on Lockheed PAC's behalf.

4. The Federal Election Commission ("FEC") was the agency of the United States that was responsible for administering and enforcing the Federal Elections Campaign Act ("FECA"). The FEC was also responsible for providing accurate information to the public about the amounts and sources of campaign contributions.

5. Under the provisions of the FECA, Lockheed PAC was required to file periodic reports with the FEC identifying each person who made a contribution during the reporting period whose contribution or contributions for that calendar year aggregated over \$200. Lockheed PAC was also required to identify each of its contributions during the reporting period whose contribution or contributions for that calendar year aggregated over \$200.

6. From approximately in or about January 2002, to on or about December 5, 2003, PHELPS wrote checks totaling approximately \$160,000 from Lockheed PAC payable to himself, and then cashed and deposited those checks for his own personal use.

The Scheme and Artifice and Its Purpose

7. From in or about January 2002, and continuing to on or about December 5, 2003, PHELPS devised and intended to devise a scheme and artifice to defraud Lockheed PAC of money and property held by Lockheed PAC. The purpose of the scheme and artifice was to obtain personal financial enrichment for PHELPS by defrauding Lockheed PAC of money held

by Lockheed PAC in Lockheed PAC's bank account.

Manner and Means

8. Defendant PHELPS carried out the scheme and artifice in the following ways, among others:

9. It was a part of the scheme and artifice that PHELPS took checks from the Lockheed PAC checking account and, instead of writing the checks to federal political candidates, wrote checks to himself. PHELPS then forged the signatures of two Lockheed PAC executives, endorsed the checks to himself, and deposited the checks into PHELPS' personal bank account for PHELPS' personal use.

10. It was a further part of the scheme and artifice that, in order to evade detection of his theft, PHELPS concealed the existence of these payments from other individuals employed at Lockheed PAC by writing checks to himself in amounts commonly associated with federal political contributions made by Lockheed PAC – \$500 or \$1,000 – and by subsequently altering the computer system at Lockheed PAC to change the payee information concerning each check that PHELPS wrote himself. As a result, although particular checks were in fact written to, and cashed by, PHELPS, PHELPS changed the Lockheed PAC's computer records to make it appear that each of those checks had instead been written to a federal political candidate or campaign.

11. For instance, on or about March 15, 2002, PHELPS wrote Lockheed PAC Check Number 8608 to himself in the amount of \$1,000. Thereafter, PHELPS manually changed the Lockheed PAC computer system to make it appear that Check Number 8608 had instead been written to the federal campaign of a candidate in the amount of \$1,000.

12. It was a further part of the scheme and artifice that, in order to evade detection of his theft, PHELPS concealed the existence of these payments from the FEC. Lockheed PAC was

required to make periodic reports to the FEC concerning each and every contribution made to a federal political candidate or campaign by, or on behalf of, Lockheed PAC. Lockheed PAC made these transmissions to the FEC by electronic wire transmission from Lockheed PAC's offices in Arlington, Virginia, to the FEC in Washington, District of Columbia. In order to maintain the appearance that the payments to himself were in fact federal political contributions, PHELPS caused Lockheed PAC to transmit to the FEC the false information concerning those checks. PHELPS made and caused these periodic FEC filings until June 30, 2003, at which point he stopped making Lockheed's required periodic filings to the FEC.

13. Pursuant to this scheme and artifice, from in or about January 2002 to on or about December 5, 2003, PHELPS wrote himself more than 130 checks, each of which he cashed for his personal use, and each of which he fraudulently reflected in Lockheed PAC's FEC filings as instead being checks to federal political candidates or campaigns. The amount of these checks totaled approximately \$160,000.

The Wire Transmissions

14. On or about each date set forth below, PHELPS, for the purpose of executing, and attempting to execute, the scheme and artifice, did transmit and cause to be transmitted in interstate commerce, by means of a wire communication, certain signs, signals and sounds, that is, electronic transmissions of Lockheed PAC's FEC filings from PHELPS' office in Arlington, Virginia, to the FEC's offices in Washington, District of Columbia:

<u>Count</u>	<u>Date of Wire Transmission</u>	<u>Period of Time Covered</u>
1	April 20, 2002	March 1-31, 2002
2	May 20, 2002	April 1-30, 2002
3	June 17, 2002	May 1-31, 2002

4	July 20, 2002	June 1-30, 2002
5	August 21, 2002	July 1-31, 2002
6	September 20, 2002	August 1-31, 2002
7	October 19, 2002	September 1-30, 2002
8	October 24, 2002	October 1-16, 2002
9	December 5, 2002	October 17-November 25, 2002
10	January 31, 2003	November 26-December 31, 2002
11	April 18, 2003	January 1-March 31, 2003
12	July 21, 2003	April 1-June 30, 2003

All in violation of Title 18, United States Code, Section 1343.

COUNTS THIRTEEN THROUGH TWENTY-FOUR

(False Statements)

18 U.S.C. § 1001

15. Paragraphs 1 to 6 and 9 to 13 are realleged as if fully set forth herein.

16. Beginning on or about April 20, 2002, and continuing until in or about December 24, 2003, in the District of Columbia and elsewhere, in a matter within the jurisdiction of the executive branch of the Government of the United States, that is, the Federal Election Commission, defendant PHELPS knowingly and willfully made and caused to be made material false, fictitious, and fraudulent statements and representations, namely, defendant PHELPS stated in required periodic filings with the FEC for Lockheed PAC, as set forth below, that particular checks were written to a federal political candidate or campaign when, in fact, they were written to, and cashed by, PHELPS for his personal use:

<u>Count</u>	<u>Date of False Statement Made or Caused</u>	<u>Period of Time Covered</u>
13	April 20, 2002	March 1-31, 2002

14	May 20, 2002	April 1-30, 2002
15	June 17, 2002	May 1-31, 2002
16	July 20, 2002	June 1-30, 2002
17	August 21, 2002	July 1-31, 2002
18	September 20, 2002	August 1-31, 2002
19	October 19, 2002	September 1-30, 2002
20	October 24, 2002	October 1-16, 2002
21	December 5, 2002	October 17-November 25, 2002
22	January 31, 2003	November 26-December 31, 2002
23	April 18, 2003	January 1-March 31, 2003
24	July 21, 2003	April 1-June 30, 2003

All in violation of Title 18, United States Code, Section 1001.

A TRUE BILL.

Foreperson

WILLIAM M. WELCH II
Chief
Public Integrity Section

By:

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